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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

1 RECORD OF ORAL HEARING
2
3 UNITED STATES PATENT AND TRADEMARK OFFICE
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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 *Ex parte* DAVID THEILER
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13 Appeal 2009-004274
14 Application 10/689,610
15 Technology Center 3600
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18 Oral Hearing Held: September 9, 2009
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20 Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU
21 R. MOHANTY, *Administrative Patent Judges*.
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24 ON BEHALF OF THE APPELLANT:
25

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27
28 Matt Weinstein, Esquire
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33

34 The above-entitled matter came on for hearing on September 9, 2009, at the
35 U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia,
36 before Timothy J. Atkinson, Free State Reporting, Inc.

PROCEEDINGS

MS. BOBO-ALLEN: Calendar No. 6, Appeal No. 2009-4274, Mr. Weinstein.

JUDGE CRAWFORD: Good morning.

MR. WEINSTEIN: May it please the Board, Matt Weinstein for the Applicant. I'm here to talk about three items today, in particular the limitations in claims 1 and 8.

JUDGE CRAWFORD: Excuse me. Could you introduce the gentleman with you?

MR. WEINSTEIN: Oh, this gentleman is my colleague Giani Minotoli also for the Applicant.

JUDGE CRAWFORD: Okay.

MR. WEINSTEIN: Sorry about that.

Here to talk about three claim limitations. In particular, in claim 1 automatically generates subsequent worker assignments without further interaction from the user. Claim 8, production resource of set organization using a skill matrix, and then also in claims 8 and claim 12, definition of acuities, each acuity including a set of activities that require minimum skill level and/or licensure and using the acuities to determine worker assignments.

In particular, the Examiner in this case has relied on a reference, the Miller reference, which teaches or at least describes a link to Microsoft Project which is an application platform used for project planning. The reference in question details a -- I believe it's called a leveling operation which the Examiner says automatically generates subsequent worker

1 assignments without further interaction from the user. However, it is the
2 Applicant's position that the reference does not at all teach automatically
3 generating subsequent worker assignments. Instead it simply reorganizes or
4 pushed back existing assignments. There's no generation of assignments at
5 all. It just simply reorganizes.

6 And the critical piece of the claim is, as it notes, to create a report
7 comparing the workflow plan with the workflow performed and then using
8 the report to automatically generate subsequent worker assignments as part
9 of a work flow process. And so it is the Applicant's position that
10 rescheduling existing task is not generating a task as claimed.

11 In particular, the reference teaches also that the project software cannot
12 take into account all of the subtle things that you know about your projects.
13 You should always review the leveling changes in question and, you know,
14 as it states in the claim, the use of the report to generate subsequent
15 assignments is done without further interaction from the user, and even
16 though the Examiner argues that the Microsoft that -- he makes an argument
17 in the answer that something can be done and yet not require interaction, and
18 then on the back end be interacted with from the user's standpoint, but it is
19 our position that essentially the entire process must be executed without user
20 interaction as the claim states.

21 Additionally, the Examiner cites to several pages in the reference
22 dealing with associating tasks with each other, and those pages which is
23 particularly 22 to 24 and 27 in the reference deal with already generated
24 tasks, and those tasks are not generated from a workflow report either. So in
25 sum, with respect to that claim limitation automatically generating
26 subsequent worker assignments without further interaction from the user, it

1 is Applicant's position that the references do not teach or suggest that
2 limitation.

3 I'll move on to claim 8. In particular, there are two limitations in
4 question which the Examiner argues is disclosed in the Miller reference by
5 virtue of the Miller reference's competency model. The competency model
6 relates more to as disclosed in Miller a method for evaluating workers and
7 their level of skill and not in terms of skills required to perform particular
8 tasks within a department as claimed. The production resource of said
9 organization uses a skill matrix. As well, it does not teach or suggest a skill
10 matrix as is discussed in the specification at paragraph 95 which states as a
11 definition for the skill matrix, skill matrix page is used to create an
12 association between resources and skills required in departments.

13 The other limitation in question, acuity, the Examiner states that the
14 competency model also reads on this as well, the Examiner cites column 20,
15 lines 28 to 30 of Miller, stating that the competency model defines roles for
16 individuals when it is clear both from the claim language and the discussion
17 in the specification at paragraph 69 of our application that the claim
18 language defines a set of activities which require approximately the same
19 level of skill or licensure, and the claim language says require a minimum
20 level of skill or licensure but it's -- the key is that the definition of the term
21 acuity is, as claimed, a set of activities that require a common level of skill
22 or licensure and not -- and really does not have any relation at all to the
23 competency of a particular individual. It is just simply that the set of
24 activities for any one individual requires the same amount of competency or
25 licensure.

1 I believe I have made all of my points with respect to those three
2 limitations. If the panel has any questions, I'm happy to respond.

3 JUDGE CRAWFORD: Questions, Judge Fischetti?

4 JUDGE FISCHETTI: No.

5 JUDGE CRAWFORD: Questions?

6 JUDGE MOHANTY: I have no questions.

7 JUDGE CRAWFORD: Thank you.

8 MR. WEINSTEIN: You're welcome.

9 (Whereupon, the hearing concluded on September 9, 2009.)